port the principal case. If there has been a wrongful failure of performance the question of intention should be immaterial. Once the contract has been substantially broken, it does not help matters that the wrongdoer has the best of intentions for the future. Though this doctrine goes somewhat farther than the English decisions, and has been repudiated in New Jersey, *Gerli* v. *Poidebard Silk Mfg. Co.*, 31 Atl. Rep. 401, it seems sound on principle. See 9 HARVARD LAW REVIEW, 148. As to exactly what constitutes a material breach no definite rule can be laid down. It is purely a matter of judicial opinion. But it certainly would seem that the materiality of the breach should in no way be measured by the intention of the wrongdoer. Otherwise an instalment contract becomes perverted into an agreement to engage in a succession of lawsuits for such damages as the vendor may be able to recover, as a substitute for what he expressly bargained. Unless the wrongdoer can plead a defence for his default, according to sound business principles he should not be allowed to rely on his intention in case of the other party's failure to perform.

DEATHS CAUSED BY A COMMON DISASTER. — Where several perish in the same disaster, the common law, differing from other legal systems, has always refused to raise any presumption of survivorship. Not only has it refused to presume that a particular one survived, but it has also refused to presume that death occurred at the same time. *Wing* v. *Angrave*, 8 H. L. C. 183. Where, however, the distribution of property is in question, the heirs-at-law are favored, and no one is allowed to claim without proof rights to property which are based on survivorship. Accordingly, the property is distributed as if death had occurred at the same moment. But this is only a rule of distribution and not a presumption of fact. *Newell* v. *Nichols*, 75 N. Y. 78.

In a recent case, the court seems to have overlooked this distinction between a presumption and a rule of distribution. A Fraternal Benefit Association had, by a death benefit certificate, promised to pay a sum of money to the wife of an assured member upon his death, and "in case she died before" her husband, then to the assured's heirs. Both husband and wife lost their lives in a fire, and there was nothing to show which died first. Upon a bill of interpleader by the association, the court held that the matter must be treated as if both had died at the same time, and, as the benefit had never vested in the wife, it should go to the assured's heirs. *Balder* v. *Middeke*, 5 Chicago Law Journal (N. S.), 325.

It will, however, be recognized that the court was not engaged in distributing the estate of a deceased person, but in the interpretation of a contract. The rule of distribution which favors the heir therefore can here have no application, and the common law neither favors nor hinders any one by a presumption. Moreover, as the question arises on a bill of interpleader, there is no burden of proof upon either one as against the other except such as the contract itself imposes. But there is clearly a difference between the rights of the parties under the contract. The claimants are called upon by the interpleader bill to state their causes of action to the court, and, to do this, each must frame a declaration against the company containing all the allegations essential to establish his right. This he must support by affidavits and by evidence if necessary. The promise to pay the widow is limited by a condition which is

clearly expressed as subsequent in form, whereas the right of the heirs is contingent upon a condition precedent. *Cowman* v. *Rogers*, 73 Md. 403. This is the natural and almost necessary construction of the contract, although, in a similar case, the Massachusetts court took a different view. *Fuller* v. *Linzee*, 135 Mass. 468. It will be seen that the heirs cannot state a claim without alleging the death of the beneficiary in the lifetime of the assured, or, at least, her death at the same time. This claim they cannot substantiate. The wife's representatives, however, state a valid *prima facie* claim by alleging merely the death of the assured. Consequently the decision of the court favoring the heirs' claim seems unjustifiable.

THE RIGHTS OF TRUSTEES TO INDEMNITY. — Where one person at the request of another undertakes a trust for that other's benefit, he has generally been held entitled to be indemnified by the *cestui que trust* personally, where the trust fund was insufficient, for any expenses connected with the execution of the trust. *Hemming* v. *Maddock*, L. R. 7 Ch. 395; *Grissell* v. *Brestowe*, L. R. 4 C. P. 36. The question whether the mere trust relation imposes the same liability on the beneficial owner independently of contract was for the first time presented in an important case lately decided by the Privy Council. *Hardoon* v. *Belilios*, 83 L. T. Rep. 573. A firm acquired stock in a bank, and had it registered in the name of the plaintiff, one of its clerks, he executing and delivering to the firm a blank transfer. This transfer came into the hands of one Coxon, who pledged it to the defendants, and on the settlement of accounts between Coxon and the defendants the latter became the beneficial owners of the stock. Later the plaintiff applied to the defendants to accept a transfer of the stock on the bank's books, but this the defendants refused. On the bank subsequently going into liquidation the plaintiff was placed on the list of contributories, and sued for calls so paid by him. The court held the defendant liable on the express ground that a person *sui juris* beneficially entitled to shares which he cannot disclaim, is bound, in a court of equity, to indemnify the trustee against calls.

On the facts of the principal case the result reached may be desirable, but it is difficult to feel the certainty of the court as to its obvious correctness. Lord Lindley professed to find the rule imposing liability under the circumstances of the principal case settled by a long line of decisions extending from *Balsh* v. *Hyham*, 2 P. Wms. 453, to *Hughes-Hallet* v. *Indian Gold Mines Co.*, 22 Ch. D. 561. In all these cases, however, the parties either stood in the relation of vendor and purchaser, or there was a contract between them, or a request by the defendant for the plaintiff to become trustee. These facts Lord Lindley stated were immaterial, but it was on these facts that the counsel for the plaintiff in all the cases relied, and the strongest expressions in favor of the principal case consist of loose statements broader than the matter there under consideration required. Moreover, the great authority of Lord Blackburn points squarely the other way. *Fraser* v. *Murdoch*, 6 App. Cas. 855. Hitherto, as far as actual decisions went, the trust relation could safely be regarded as unilateral, the trustee alone being under any obligation: all his rights against the *cestui que trust* arising separately — out of *quasi*-contract for a benefit conferred, or because of a contract of in-